

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DAVID E. ALEXANDER,
Plaintiff,

v.

NATE BIRKMEIER,
Defendant.

C.A. No. 19-123 Erie

**District Judge Susan Paradise Baxter
Magistrate Judge Richard A. Lanzillo**

MEMORANDUM ORDER

Plaintiff David E. Alexander, an inmate incarcerated at the Federal Correctional Institution at McKean in Bradford, Pennsylvania, commenced this action on April 19, 2019, by filing a *pro se* complaint that was ultimately docketed on June 10, 2019, after Plaintiff submitted the required filing fee. The action is brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1592, *et seq.* (“FDCPA”), against Defendant Nate Birkmeier, who is alleged to have been President of “ERC,” a dissolved corporation. Plaintiff alleges that ERC falsely notified credit reporting agencies that Plaintiff had failed to pay the sum of \$874.00 on an account assigned from Comcast, a telecommunications and entertainment company, to ERC, and subsequently failed to validate the debt after receiving a request to do so from Plaintiff. In all, the complaint asserts twelve violations of the FDCPA, for which Plaintiff seeks damages of \$36,400.00, plus costs. This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. §636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On September 9, 2021, Defendant filed a motion to dismiss Plaintiff’s complaint

asserting, *inter alia*, that this Court lacks personal jurisdiction over Defendant [ECF No. 21]. Plaintiff has failed to file a response to Defendant's motion, and has, in fact, failed to take any action to prosecute this case since filing a motion for default judgment on April 6, 2020 [ECF No. 14], which was denied as premature by Magistrate Judge Lanzillo.

On March 21, 2022, Magistrate Judge Lanzillo issued a report and recommendation ("R&R") recommending that Defendant's motion to dismiss [ECF No. 21] be granted and that this action be dismissed because the Court lacks personal jurisdiction over Defendant. Alternatively, the R&R recommends dismissal of this action due to Plaintiff's failure to prosecute. No timely objections to the R&R have been filed. [ECF No. 27]

After de novo review of the complaint, together with the report and recommendation, the following order is entered:

AND NOW, this 25th day of April, 2022;

IT IS HEREBY ORDERED that Defendant's motion to dismiss [ECF No. 21] is GRANTED and this case is DISMISSED because the Court lacks personal jurisdiction over the Defendant, and, alternatively, the case is DISMISSED for Plaintiff's failure to prosecute. The report and recommendation of Magistrate Judge Lanzillo, issued March 21, 2022 [ECF No. 27], is adopted as the opinion of the Court. The Clerk is directed to mark this case CLOSED,


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge

all parties of record